IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.2837 OF 2005

Dayanand Ramchandra Patil ...Applicant

vs.

Sadiya Construction and others ...Respondents

Mr.D.S.Sawant for the Applicant
Mr.D.P.Adsule, A.P.P. for State

CORAM: A.S.OKA,J.
DATE : NOVEMBER 30,2006.

P.C.:

1. Heard Shri Sawant for the Applicant. I have perused the notes of evidence and the impugned Judgment and order. According to the case of the complainant, the accused was liable to pay a sum of Rs.52,000/- to the Applicant on account of building material supplied by the Applicant. According to the case of the Applicant, a cheque dated 20th March 2004 was issued in the sum of Rs.50,000/- by the first Respondent for payment of price of the building material supplied by the Applicant. Perusal of the evidence shows that on 10th June 2004, there was a meeting attended by the Applicant, first Respondent and others in which a settlement was arrived at and a resolution was recorded in writing which was admittedly signed by the Applicant. The said resolution was admitted to have been signed by the Applicant in his cross examination. The said resolution was produced at Exh.33. The said resolution discloses that by way of settlement, the Applicant has accepted a sum of Rs.25,000/- from the first Respondent

towards the price of the material supplied. Admittedly the cheque in the sum of Rs.50,000/- was deposited thereafter by the Applicant which was dishonoured. On the basis of the said cheque, the complaint was filed.

2. As it was established that the Applicant had accepted a sum of Rs.25,000/- by way of settlement on account of price of the material supplied by him to the first Respondent, it is obvious that the presumption under section 139 of the Negotiable Instruments Act, 1881 was rebutted. In view of the said subsequent settlement, the learned Trial Judge has passed an order of acquittal. On the date on which the cheque was deposited for encashment by the Applicant, the liability of the first Respondent was not subsisting.

3. The view taken by the learned Trial Judge is a possible view which could have been taken on the basis of the evidence on record. Merely because another conclusion is possible to be drawn is no ground to interfere in the Appeal against acquittal. No case is made out for grant of leave. Application is rejected.

4. It is made clear that the observations made in this order are for limited purpose of considering the prayer for grant of leave to prefer an Appeal.

JUDGE